



# Copyright (International Protection) Amendment Regulations 2004 (No. 2)<sup>1</sup>

**Statutory Rules 2004 No. 362<sup>2</sup>**

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I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Copyright Act 1968*.

Dated 16 December 2004

P. M. JEFFERY  
Governor-General

By His Excellency's Command

PHILIP RUDDOCK  
Attorney-General

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**1 Name of Regulations**

These Regulations are the *Copyright (International Protection) Amendment Regulations 2004 (No. 2)*.

**2 Commencement**

These Regulations commence on the commencement of Schedule 1 to the *US Free Trade Agreement Implementation Act 2004*.

**3 Amendment of *Copyright (International Protection) Regulations 1969***

Schedule 1 amends the *Copyright (International Protection) Regulations 1969*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Subregulation 3 (1), after definition of *at a material time***

*insert*

***Australian retransmission*** means a retransmission of a television broadcast:

- (a) over the Internet; and
- (b) made from a place in Australia.

***Australian television broadcast*** means a television broadcast mentioned in section 91 of the Act.

**[2] Subregulation 3 (1), after definition of *Berne Convention country***

*insert*

***broadcaster***, for an encoded broadcast, has the meaning given by section 135AL of the Act.

***encoded broadcast*** has the meaning given by section 135AL of the Act.

**[3] Subregulation 3 (1)**

*insert in correct alphabetical position determined on a letter-by-letter basis*

***US broadcaster*** means a broadcaster who:

- (a) is entitled, under the law of the United States of America, to make an encoded broadcast; and
- (b) is, at a material time:
  - (i) a citizen or national of the United States of America; or
  - (ii) a person resident in, or a body corporate that has its headquarters in, the United States of America.

***US television broadcast*** means a television broadcast made from a place in the United States of America, at a material time, by a relevant broadcaster.

**[4] Regulation 4, heading**

*substitute*

**4 Protection — Berne Convention countries, UCC countries, USA, Rome Convention countries, WPPT countries and WTO countries (Act s 184)**

**[5] After subregulation 4 (7)***insert**Australian retransmission of US television broadcasts*

- (7A) Subject to these Regulations, a provision of the Act that applies to an Australian retransmission of an Australian television broadcast applies in relation to an Australian retransmission of a US television broadcast:
- (a) in the same way as the provision applies, under the Act, in relation to an Australian retransmission of an Australian television broadcast; and
  - (b) as if the US television broadcast were an Australian television broadcast.

*Encoded broadcast made from the USA*

- (7B) Subject to these Regulations, a provision of Part VAA of the Act that applies to an encoded broadcast made from a place in Australia (an ***Australian encoded broadcast***) applies in relation to an encoded broadcast made at a material time by a US broadcaster from a place in the United States of America (a ***US encoded broadcast***):
- (a) in the same way as the provision applies, under the Act, in relation to an Australian encoded broadcast; and
  - (b) as if the US encoded broadcast were an Australian encoded broadcast.

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**Notes**

1. These Regulations amend Statutory Rules 1969 No. 60, as amended by 1969 No. 65; 1974 No. 137; 1980 No. 276; 1981 No. 74; 1983 No. 127; 1984 No. 43; 1990 Nos. 356 and 357; 1991 Nos. 451 and 452; 1992 No. 124; 1993 No. 214; 1994 No. 114; 1995 Nos. 67 and 436; 1998 No. 360; 2001 No. 29; 2003 No. 337; 2004 No. 257.
2. Notified in the *Commonwealth of Australia Gazette* on 23 December 2004.

## Copyright (International Protection) Amendment Regulations 2004 (No. 2) 2004 No. 362

Statutory Rules 2004 No. 362

### **EXPLANATORY STATEMENT**

Issued by the authority of the Attorney-General

*Copyright Act 1968*

*Copyright (International Protection) Amendment Regulations 2004 (No. 2)*

The *Copyright Act 1968* (the Act) grants and determines the scope of copyright in Australia.

Section 249 of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted by the Act to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Further details of the scope of the Act and its legislative provisions are at [Attachment A](#).

The *US Free Trade Agreement Implementation Act 2004* (the USFTA Act) consists of schedules that amend the relevant Australian legislation to fulfil Australia's obligations under the Australia-United States Free Trade Agreement (AUSFTA). Schedule 9 to the USFTA Act amends the Act to fulfil obligations under Chapter 17 of the AUSFTA, which deals with Intellectual Property Rights. In accordance with Article 17.1.6 of the AUSFTA, Australia is obliged to accord to 'nationals' of the USA national treatment with respect to the protection and enjoyment of copyright covered by Chapter 17 of the AUSFTA. 'National treatment' requires that US owners of copyright enjoy the same rights under the Act in Australia as are enjoyed by Australians.

In relation to the rights of broadcasters,

- Article 1704.10(b) of the AUSFTA requires a US television broadcaster to be able to authorise (or prevent) the Internet retransmission of its broadcasts; and
- Article 17.7.2 of the AUSFTA introduces new obligations to provide civil remedies, including compensatory damages, for any person injured by any of the activities described in Article 17.7.1 in relation to encrypted program-carrying signals, including a person that holds an interest in the signal or its content.
- The activities described in Article 17.7.1(a) are to make or deal commercially in devices or systems known to be primarily of assistance in decoding an encrypted program-carrying satellite signal without the lawful signal-distributor's authorisation. Those described in Article 17.7.1(b) include receiving, making use of and further distributing a signal knowing that it has been decoded without such authority.

The purpose of the proposed Regulations is to amend the provisions of the *Copyright (International Protection) Regulations 1969* to extend copyright protection in Australia to US broadcasts to comply with the obligations of Article 17A.10(b) and 17.7.2 of the AUSFTA.

Details of the proposed Regulations are included in [Attachment B](#).

The Act specifies no conditions that need to be met before the power to make the proposed Regulations may be exercised.

The proposed Regulations would commence on the commencement of Schedule 1 to the USFTA Act. This will be the later of 1 January 2005 and the date of the entry into force of the AUSFTA for Australia.

## ATTACHMENT A

### Details of the scope of the *Copyright Act 1968* and its legislative provisions

Under the *Copyright Act 1968* (the Act), copyright protection is provided to original literary, dramatic, musical and artistic works, as well as to other subject matter (cinematograph films, sound recordings, broadcasts and published editions) where there is a relevant connection with Australia, such as if the author is an Australian citizen or resident, or the copyright material is first published in Australia. In addition, Australia is a member of several conventions which provide for an international copyright system through the principle of national treatment (formal reciprocity) which requires each convention country to give, with some exceptions, the same rights to nationals of other convention countries as it gives to its own nationals under its domestic law.

Sections 184 and 249 authorise the making of regulations in relation to foreign works and other subject matter. Paragraph 184(1)(f) provides that the regulations made under the Act may apply any of the provisions of the Act in relation to television broadcasts and sound broadcasts made from places in a country by persons entitled under the law of that country to make such broadcasts in a like manner as those provisions apply in relation to broadcasts made from Australia by the Australian Broadcasting Corporation, the Special Broadcasting Service Corporation, by a holder of a licence allocated by the Australian Broadcasting Authority under the *Broadcasting Services Act 1992* or by a person authorised to make the broadcast by a class licence determined by that Authority under the Act.

## ATTACHMENT B

Details of the proposed *Copyright (International Protection) Amendment Regulations 2004 (No. 2)*

**Regulation 1** would provide that the regulations are the *Copyright (International Protection) Amendment Regulations 2004 (No. 2)*.

**Regulation 2** would provide that the regulations commence on the commencement of Schedule 1 to the *US Free Trade Agreement Implementation Act 2004* (the USFTA Act).

**Regulation 3** would provide that Schedule 1 to the regulations amends the *Copyright (International Protection) Regulations 1969*.

### **Schedule 1 - Amendments**

**Item 1** would insert new definitions of 'Australian retransmission' and 'Australian television broadcast' in subregulation 3(1). 'Australian retransmission' would be defined as a retransmission of a television broadcast that is made over the Internet, and which is made from a place in Australia.

'Australian television broadcast' is defined as a television broadcast as mentioned in section 91 of the *Copyright Act 1968* (the Act). Section 91 of the Act refers to a television broadcast made from a place in Australia under the authority of a licence or a class licence under the *Broadcasting Services Act 1992*, or by the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation.

**Item 2** would insert new definitions of 'broadcaster' and 'encoded broadcast' in subregulation 3(1). For the purposes of an encoded broadcast, 'broadcaster' would be defined as having the meaning given by section 135AL of the Act. Section 135AL provides that a broadcaster is a person who makes an encoded broadcast.

'Encoded broadcast' would be defined as having the meaning given by section 135AL of the Act. Section 135AL provides that an encoded broadcast is either:

(a) a broadcast that is made available only to persons who have the prior authorisation of the broadcaster and only on payment by such persons of subscription fees (whether periodically or otherwise); or

(b) a broadcast (other than a radio broadcast or a broadcast described in (a) delivered by a broadcasting service that is a commercial or national broadcasting service within the meaning of the *Broadcasting Services Act 1992*;

being in either case a broadcast, access to which in an intelligible form is protected by a technical measure or arrangement (including a computer program).

**Item 3** would insert new definitions of 'US broadcaster' and 'US television broadcast'. 'US broadcaster' is defined as a broadcaster who is entitled under a law of the United States of America to make an encoded broadcast, and who is, at a material time, a citizen or national of the USA, a person resident in the USA, or a body corporate that has its headquarters there.

'US television broadcast' is defined as a television broadcast made from a place in the USA by a relevant broadcaster. 'Relevant broadcaster' is defined in subregulation 3(1) as being a person who is entitled, under the law of the country from which a broadcast is made, to make that broadcast; and who is, at a material time, a citizen or national of that country; or a person resident in, or a body corporate that has its headquarters in, that country. For the purposes of the definition of 'US television broadcast' a relevant broadcaster will be a broadcaster who is entitled under a law of the USA to make the television broadcast, and who is, at a material time, a citizen or national of the USA, a person resident in the USA, or a body corporate that has its headquarters there.

**Item 4** would substitute a new heading to Regulation 4 to include reference to the USA.

**Item 5** would insert new subregulations 4(7A) and 4(7B).

Proposed subregulation 4(7A) would apply the Act to an Australian retransmission of a US television broadcast as if the US broadcast were an Australian broadcast.

This item would extend the protection of paragraph 87(c) of the Act, in so far as it applies to Internet retransmissions, to television broadcasts made by a US broadcaster from a place in the USA.

Proposed subregulation 4(7B) would provide that Part VAA of the Act (Broadcast decoding devices) applies to an US encoded broadcast as if the US broadcast were an Australian encoded broadcast.

This item would extend the protection of Part VAA of the Act against unauthorised access to encoded sound and television broadcasts to those made by US broadcasters from places in the USA.